

UNITED STATES OF AMERICA
SMALL BUSINESS ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
WASHINGTON, D.C.

SIZE APPEAL OF:

American Security Programs

Appellant

RE: Southeastern Paragon

Solicitation No. RFP SSA-RF-06-1014

Social Security Administration

Office of Acquisition & Grants

Baltimore, Maryland

Docket No. SIZ-2006-04-04-23

Decided: June 28, 2006

APPEARANCES

Lynn C. Oliver, President
for Appellant American Security Programs

Katherine S. Nucci, Esq.
Thompson Coburn, LLP
for Southeastern Paragon

DIGEST

Two firms approved by SBA to be a mentor and protégé under 13 C.F.R. § 124.520 may joint venture as a small business for any Federal Government procurement, without limitation, provided the protégé qualifies as small for the size standard corresponding to the North American Industry Classification System (NAICS) code assigned to the procurement.

The assistance which a mentor extends to a protégé under an approved agreement cannot be relied upon to make a finding of affiliation.

DECISION

HOLLEMAN, Administrative Judge:

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Jurisdiction

This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

Issues

Whether two firms approved by SBA to be a mentor and protégé under 13 C.F.R. § 124.520 may joint venture as a small business for any Federal Government procurement, without limitation.

Whether the assistance which a mentor extends to a protégé under an approved agreement may ever be relied upon to make a finding of affiliation.

I. BACKGROUND

A. Solicitation and Protest

On December 20, 2005, the Social Security Administration (SSA) issued the subject solicitation for the acquisition of security guard services at its Metro West complex in Baltimore, Maryland. The Contracting Officer (CO) classified the procurement as a 100% small business set aside, under NAICS code 561612, Security Guards and Patrol Services, with a corresponding \$10.5 million annual receipts size standard. Initial offers were due on January 19, 2006. On March 7, 2006, SSA made award to Southeastern Paragon (SP). On March 8, 2006, the CO notified the unsuccessful offerors of the award. On March 13, 2006, American Security Programs (Appellant) filed a size protest. Appellant asserts that SP is also known as Paragon Systems, Inc. and is a wholly-owned subsidiary of Tri-S Security. On March 15, 2006, Side Bar Associates also filed a size protest.

On March 27, 2006, the Small Business Administration (SBA) Office of Government Contracting - Area III, in Atlanta, Georgia (Area Office) informed SP of the protest and requested it submit a response, a completed SBA Form 355, and certain other information.

On March 29, 2006, SP responded to the protest. SP informed the Area Office that it is a joint venture between Southeastern Protective Services, Inc. (SPSI), a participant in SBA's 8(a) program, and Paragon Systems, Inc. (Paragon). SP further stated that this joint venture was undertaken under a mentor-protégé agreement approved by SBA. SP submitted a copy of SBA's approval of its mentor-protégé agreement, dated December 22, 2005. SP stated it was created to receive mentor-assisted contracts from Paragon and it has no receipts to date. SP asserts that SPSI's receipts are within the size standard, and does not deny that Paragon is other than small. SPSI and Paragon have a joint venture agreement under which SPSI must perform at least 51% of the contract work.

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B. Size Determination No. 3-2006-44-45

On March 31, 2006, the Area Office issued Size Determination No. 3-2006-44-45, concluding SP is an eligible small business for this procurement. The Area Office found that the assistance Paragon provides PS is within the bounds of the mentor-protégé relationship and found no further indicia of affiliation. The Area Office also found no evidence SPSI was not qualified to perform the primary and vital functions of the contract. The Area Office dismissed the allegations that Paragon's director of operations was also SP's director of operations, as unsupported hearsay. The Area Office found that the fact that Paragon's president was listed as a secondary point of contact for SP was within the bounds of the assistance a mentor may offer a protégé without becoming affiliated. Accordingly, the Area Office found SP to be an eligible small business for this procurement.

C. The Appeal

On April 4, 2006, Appellant filed the instant appeal. Appellant asserts that the mentor-protégé program has a dollar limit, and that mentors and protégés may only joint venture without being affiliated if the dollar value of the contract is less than half the size standard corresponding to the assigned NAICS code. Appellant alleges the value of this contract exceeds the applicable size standard, and therefore this procurement is not exempt from the normal rules on affiliation. Appellant argues because the contract is not exempt from the normal rules on affiliation, and SP is an explicit joint venture relationship between SPSI and Paragon, the firms must be treated as affiliates.

Appellant then goes on to assert that there is affiliation between SP and Paragon through common management, as the two firms have a common director of operations. Further, Appellant argues SP and Paragon are also affiliated under the newly organized rule.

D. SP's Response

On April 18, 2006, SP responded to the appeal. SP argues that Appellant has misread the regulation, and that mentors and protégés may joint venture on any government procurement, even large procurements. SP argues that this is consistent with SBA's goals in establishing the mentor-protégé program. SP further asserts that the work of the joint director of operations is provided pursuant to the SBA-approved mentor-protégé agreement. SP states the newly organized concern rule is inapplicable, as SPSI has been in business for eight years.

II. DISCUSSION

Appellant filed the instant appeal within 15 days of receiving the size determination, and thus the appeal is timely. 13 C.F.R. § 134.304(a)(1).

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Appellant must prove the Area Office size determination is based on a clear error of fact or law. 13 C.F.R. § 134.314. This Office will disturb the Area Office's size determination only if the Administrative Judge, after reviewing the record and the pleadings, has a definite and firm conviction the Area Office erred in key findings of law or fact. *Size Appeal of Taylor Consulting, Inc.*, SBA No. SIZ-4775, at 11 (2006).

Here it is clear, and undisputed, that SP is a joint venture Paragon and SPSI entered into under a mentor-protégé agreement approved by SBA under 13 C.F.R. § 124.520. The purpose of the program is to encourage mentor firms to provide various forms of assistance to firms which are participants in SBA's 8(a) program. 13 C.F.R. § 124.520(a). Two firms approved by SBA to be a mentor and protégé may form a joint venture for any Federal Government procurement. 13 C.F.R. § 121.103(h)(3)(iii); *Size Appeal of Technical Support Services and Vanguard Resources Corporation (TSS/VRC)*, SBA No. SIZ-4794, at 15 (2006). The joint venture becomes exempt from the normal rules of affiliation. 13 C.F.R. § 121.103(b)(6), (h)(3)(iii); *TSS/VRC*, SBA No. SIZ-4794, at 16. The exemption continues as long as the protégé concern qualifies as small for the size standard applicable to the contract. *Id.* The assistance which a mentor extends to a protégé under an approved agreement cannot be relied upon to make a finding of affiliation. 13 C.F.R. §§ 121.103(b)(6); 124.520(d)(4); *TSS/VRC*, SBA No. SIZ-4794, at 16.

Appellant argues that the regulation limits the mentor-protégé joint ventures in the type of contracts they may undertake without incurring a finding of affiliation:

A mentor and a protégé may joint venture as a small business for any government procurement, including procurements with a dollar value less than half the size standard corresponding to the assigned NAICS code and 8(a) sole source contracts, provided the protégé qualifies as small for the procurement and, for purposes of 8(a) sole source requirements, the protégé has not reached the dollar limit set forth in § 124.519.

13 C.F.R. § 124.520(d)(1) (emphasis supplied).

Appellant argues that the underlined language in the regulation limits the exemption from affiliation rules in mentor-protégé joint ventures to only those contracts. However, this argument is at variance with the plain language of the regulation. The regulation clearly states that a mentor and protégé may venture for any government procurement. The regulation then identifies two particular types of contract as included in the category, but the language used is not limiting language. The regulation identifies two particular types of contract as included in the definition of "any," but it excludes no type of contract from that definition. "Any" government procurement must mean all government procurements of every type. This is confirmed by the parallel language in the size regulation:

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Two firms approved by SBA to be a mentor and protégé under 13 C.F.R. § 124.520 may joint venture as a small business for any Federal Government procurement, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in 13 C.F.R. § 125.519.

13 C.F.R. § 121.103(h)(3)(iii) (emphasis supplied).

The language in the size regulation contains nothing that could be considered as a limitation on a mentor-protégé joint venture's ability to compete for Federal procurements. Further, there is nothing in the preambles to the mentor-protégé regulations which support construing the language of § 124.520(d)(1) as limitations on the type of contracts joint ventures may pursue, rather than as examples of the types of contracts they may pursue. *See* 69 Fed. Reg. 29192, 29195 (May 21, 2004); 63 Fed. Reg. 35726, 35736-37 (Jun. 30, 1998); 62 Fed. Reg. 43583, 43594-95 (Aug. 14, 1997). Finally, SBA specifically considered and rejected placing any monetary limit on the dollar amount of the contracts mentor-protégé joint ventures may perform. 63 Fed. Reg. 35726, 35736-37 (Jun. 30, 1998). Accordingly, SBA has already explicitly rejected Appellant's main argument when it promulgated this regulation.

Accordingly, I find that Appellant's position as to the meaning of 13 C.F.R. § 124.520(d)(1) is meritless. SP, as a mentor-protégé joint venture, is eligible to compete for the instant procurement without any question as to its affiliation with Paragon due to the assistance Paragon provides under the mentor-protégé agreement. This includes all the instances of assistance Appellant raises. As discussed above, the assistance Paragon provides under the mentor-protégé agreement cannot be used to find affiliation. Accordingly, SP, as a joint venture under an approved 8(a) mentor-protégé agreement, in which the protégé is a small firm, is eligible for the instant procurement. Appellant has failed to demonstrate any error of fact or law in the size determination.

III. CONCLUSION

For the above reasons, I AFFIRM the Area Office's size determination and DENY the instant appeal.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(b).

CHRISTOPHER HOLLEMAN
Administrative Judge